

A. G. Contract No. KR900733TRD  
ECS File: JPA 90-41  
Project: RRP-000-5(145)P  
TRACS: 940MAPHX S0244 01C  
Section: 4th St/Harrison & SPTCRR

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PHOENIX

56685

THIS AGREEMENT is entered into 25 September, 1990, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its City Council (the "City").

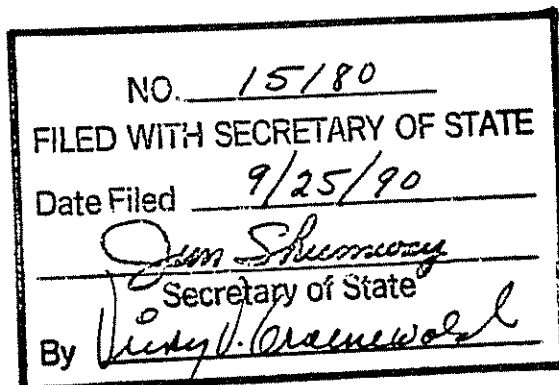
I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 11-251 and City Charter Chapter 2, Section 2 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.

4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.



5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced in this agreement and the estimated cost are as follows:

Furnish and install Flashing Light Signals with Automatic Gates and Timber Plank Crossing Surface:

Furnish & Install Flashing	
Light Signals and Gate (SPTCRR)	= \$235,750.
Furnish and Install Timber	
Grade Crossing (SPTCRR)	= \$ 66,481.
Preliminary & Const. Engineering	= \$ 3,000.
Subtotal	= \$305,231.
Federal Aid Funds @ 90%	= \$274,708.
AZ Corp. Commission Funds @ 10%	
of \$238,750 (\$305,231 - \$66,481)	= \$ 23,875.
Phoenix Funds @ 10% of \$66,481.	= \$ 6,648.
Two percent surcharge on \$302,231	= \$ 6,045.*
Total Phoenix Funds	\$ 12,693.

\*This includes a 2% surcharge on the total estimated cost as per Chief Deputy State Engineer memo dated 2 FEB 82.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. The State will furnish the City with a copy of the proposed Project Agreement to be entered into by the State and FHWA and the Railroad Company Agreement necessary for the full completion of this project.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

3. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

4. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

5. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. Local Agency assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of Local Agency and that Local Agency hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, Local Agency, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the City agrees to furnish and provide the State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Engineering Consultants Services  
205 South 17 Avenue, Room 118E  
Phoenix, AZ 85007

City Manager  
City of Phoenix  
251 W. Washington Street  
Phoenix, AZ 85004

9. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PHOENIX, A  
Municipal Corporation

STATE OF ARIZONA  
Department of Transportation

By Kenny W. Harris  
KENNY W. HARRIS, P.E.  
Title City Engineer

By Robert P. Mickelson  
ROBERT P. MICKELSON  
Deputy State Engineer

ATTEST

2710j  
29MAR

[Signature]  
ACTING CITY CLERK

RESOLUTION

BE IT RESOLVED on this 30th day of March 1990, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into agreements with the City of Phoenix for the purpose of defining responsibilities for the construction of railroad improvements the intersections of 1st Street, 2nd Street, 3rd Street, 4th Street, 2nd Avenue and 3rd Avenue and the Southern Pacific Railroad in the vicinity of Harrison Street.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

A handwritten signature in dark ink, appearing to read "Charles L. Miller", is written over a horizontal line.

CHARLES L. MILLER, Director  
Arizona Department of  
Transportation

10-7 REV. 5-82

GREEN -- CITY CLERK  
 WHITE -- CITY ATTORNEY  
 BLUE -- CITY MANAGER  
 PINK -- ACCOUNTS NOTIFICATION  
 CANARY -- DEPARTMENT NOTIFICATION  
 BUFF -- DEPARTMENT COPY

CITY OF PHOENIX, ARIZONA

## REQUEST FOR COUNCIL ACTION

ALL BOAS MUST BE IN THE CITY MANAGER'S OFFICE BY NOON ON THE TUESDAY, SEVEN DAYS BEFORE THE FORMAL CITY COUNCIL MEETING WITH ALL REQUIRED SIGNATURES COMPLETE THIS FORM PER M.P. 1908.

1. To the City Manager:

DATE June 29 19 90THE FOLLOWING COUNCIL ACTION IS HEREBY REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☒ FORMAL ACTION.

**RAILROAD CROSSING PROJECTS**  
**INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION**  
**DOWNTOWN RAILROAD CROSSINGS**  
**P-836494 - COUNCIL DISTRICTS 7 & 8**

Request the City Manager to enter into an Intergovernmental Agreement with the State of Arizona through its Department of Transportation to upgrade six Southern Pacific railroad crossings. These crossings are located at 3rd Avenue, 2nd Avenue, 1st Street, 2nd Street, 3rd Street, and 4th Street between Harrison and Jackson Street.

The upgrades will consist of new flashing lights signals and gates. Also a new timber plank crossing will be installed at each crossing.

These crossings qualify for Federal Aid and Arizona Cooperation Commission Funds. The total estimated cost for all six crossings is \$1,487,750. The City's share is \$66,147.

Work will be done by the Southern Pacific Transportation Railway Company.

Funds are available from the Arizona Highway Users fund.

2. Bid Bond (Surety) Required?

☐ Yes ☐ No

3. Bond submitted by low bidder?

☐ YES ☐ NO

4. Performance Bond (Surety) Required?

\$

5. SOURCE OF FUNDS:

Fund 007

INDEX CODE SUBJECT PROJECT

8 3 6 4 9 4 4 7 0 2

☐ BUDGETED ☐ SUPPLEMENTAL ☐ CONTINGENCY

12. Recommended by:

Department/  
FunctionDivision Head  
SignatureDepartment Head  
Signature

Transportation and Design

Technical Services

City Engineer

6. Emergency Clause?

☐ YES ☐ NO

IF LESS THAN FIVE COUNCIL MEMBERS ARE PRESENT:

☐ CONTINUE ONE WEEK-☐ ADOPT WITHOUT EMERGENCY CLAUSE

7. Requested by:

Phone #

P. Griffin 24969

8. WP Document #:

9. Desired Agenda Date:

July 11, 1990

13. Approved as to availability of funds.

14. Approved:

MANAGEMENT &amp; BUDGET DIRECTOR

CITY MANAGER

10. Formal contract required?

☐ Yes ☐ No

Previous contract #:

15. Council action taken:

Formal action:

RESOLUTION NO.

ORDINANCE NO.

DATE

7/18 19 90

F-2766

CITY MANAGER DEPT.

JUL 10 11 17 55 AM '90

RECEIVED

ENGINEERING DEPT.

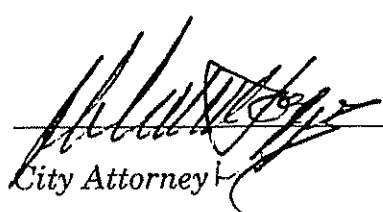
1990 JUL 12

JPA 90-41

APPROVAL OF THE CITY ATTORNEY

*I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.*

DATED this 9<sup>th</sup> day of August, 1990.

  
ACTING City Attorney





Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A.G. Contract No. KR90-0733 TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 29th day of August, 1990.

ROBERT K. CORBIN  
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over the typed name.

JAMES R. REDPATH  
Chief Counsel  
Transportation Division